or before the first hearing day if a prehearing conference is not held and to the board or district commission on or before the day of the prehearing conference, if one is held, unless the board or district commission finds that the petitioner has demonstrated good cause for failure to appear on time, and that its late appearance will not unfairly delay the proceedings or place an unfair burden on the applicant or other parties.

(4) If the request for party status is being made pursuant to section (B)(1) of this rule, the petition must include:

(a) A description of the location of the petitioner's property in relation to the proposed project, including a map, if available.

(b) A description of the potential effect of the proposed project upon the petitioner's interests with respect to each of the criteria or subcriteria under which party status is being requested.

(5) If the request for party status is being made pursuant to Rule 14(B)(2), the petition must include a description of the evidence or argument that will be presented.

The board or commission will issue an order, oral or written, granting or denying the petition. The order may restrict the participation of the petitioner to certain provisions of § 6086(a) or to certain aspects of the project, as may be appropriate under the terms of this rule. Any such order by a district commission must comply with Rule 14(F). (Amended, effective January 2, 1996.)

(C) Appearances. A party by right to a case before the board

or a district commission may appear by filing a pleading initiating a case, by attending a pre-hearing conference or hearing, or by filing a written notice of appearance with the board or commission, and serving that notice on all other parties of record. (Amended, effective May 4, 1990.)

(D) Representatives. A party to a case before the board or a district commission may appear in person, or may be represented by an attorney or other representative of his choice. The board or district commission shall enter on its docket and certificates of service the name of any representative who has appeared for a party or who has countersigned a party's pleadings. Any notice given to or by a representative of record for a party shall be considered in all respects as notice to or from the party represented. (Amended, effective March 11, 1982.)

(E) Notice for information only. The board or district commission may provide notice for information only to such additional persons as it deems appropriate. However, the receipt of notice so marked does not confer party status under § 6084(b) or this rule. (Amended, effective May 4, 1990.)

(F) Preliminary determinations of party status by district commissions and re-examination.

(1) The district commissions shall make preliminary determinations concerning party status. If a prehearing conference is not held, such determinations shall be made at the commencement of the first hearing on the application. If a prehearing conference is held, such determinations shall be made in writing immediately following the conference and prior to the

first hearing day on the application.

(2) If a district commission has made an oral preliminary determination concerning party status, a party or petitioner for party status may request that the district commission issue such determination in writing. The district commission shall issue such written determination no later than five days following the date on which the request for a written determination was made.

(3) On motion of a party or on its own motion, the district commission shall re-examine preliminary party status determinations, unless an interlocutory appeal concerning the determination(s) has been accepted by the board under Rule 43. Any re-examination of party status shall occur prior to completion of deliberations and after each party has had opportunity to present evidence, to cross-examine, and to offer argument. In such re-examination, the district commission shall presume that a party continues to qualify for party status, unless it is demonstrated that the party does not so qualify under the standards of Rule 14(A) or (B).

(4) The district commission shall state the results of all party status determinations and re-examinations in its final decision on the application. (Subsections (F)(1), (2), (3) and (4) added, effective January 2, 1996.) **See 10 VSA § 6085(c)(2).**

Rule 15. Joint Hearings

In order to avoid duplication of testimony and avoid unnecessary expense, the board and district commissions may hold

a hearing with another affected governmental agency if the agency communicates its agreement to or request for a joint hearing to the board or a district commission at least ten days before the scheduled hearing date. The communication must be in writing signed by a representative of the agency but can be sent through any party to the proceedings or directly from the affected agency. Any party may petition, in writing, to the board or district commission to request a joint hearing with another affected governmental agency.

Rule 16. Prehearing Conferences and Preliminary Rulings.

(A) Purposes. The board or a commission acting through a duly authorized delegate may conduct such prehearing conferences, upon due notice, as may be useful in expediting its proceedings and hearings. The purposes of such prehearing conferences shall be to:

(1) Clarify the issues in controversy;

(2) Identify documents, witnesses and other offers of proof to be presented at a hearing by any party; and

(3) Obtain such stipulations of parties as to issues, offers of proof and other matters as may be appropriate.

(B) Preliminary rulings. The convening officer, if a member of the board or district commission, may make such preliminary rulings as to matters of notice, scheduling, party status, and other procedural matters, including interpretation of these rules, as are necessary to expedite and facilitate the hearing process. Such rulings may also be made by a commission

chair or board chair without the convening of a prehearing conference. However, any such ruling may be objected to by any interested party, in which case the ruling shall be reviewed and the matter resolved by the board or district commission.

(C) Prehearing order. The convening officer may prepare a prehearing order stating the results of the prehearing conference. Any such order shall be binding upon all parties to the proceeding who have received notice of the prehearing conference if it is forwarded to the parties at least five day prior to the hearing. However, the time requirement may be waived upon agreement of all parties to the proceeding; and the board or a district commission may waive a requirement of a prehearing order upon a showing of cause, filing a timely objection, or if fairness so requires.

(D) Informal and non-adversarial resolution of issues. In the normal course of their duties, the board and the district commissions shall promote expeditious, informal and non-adversarial resolution of issues, require the timely exchange of information concerning an application and encourage participants to settle differences in any Act 250 proceeding. The board and district commissions may require the timely exchange of information regardless of whether parties are involved in informal resolution of issues. **See 10 VSA § 6085(e).**

Rule 17. Evidence at Hearings

(A) Admissibility. The admissibility of evidence in all cases

before the board and district commissions shall be determined under the criteria set forth in the Administrative Procedure Act, 3 V.S.A. § 810.

(B) Documents submitted for the record. Applications, certifications, and related documents accompanying applications submitted by parties shall be entered into the record of a case when they are accepted for filing by the district coordinator, district commission or board. However, all such documents shall be subject to evidentiary objections by parties to the proceeding.

(C) Order of evidence. The board or district commission shall receive evidence and testimony on any of the criteria in whatever order as appears to the board or district commission most expeditious and equitable. Upon conclusion of an offer of proof under a criterion, unless otherwise directed by the board or district commission, all other parties shall at that time present whatever evidence and testimony they intend to offer on the criterion before proceeding to another criterion. An applicant or a party may, however, request a partial review under the criteria in a particular sequence pursuant to Rule 21.

(D) Prefiled testimony. Any party to a contested case may elect to submit testimony to the board or district commission in writing. Such testimony must be clearly organized with respect to the criteria of the Act and any other issues which are addressed, and must contain a table of contents identifying the criteria and issues addressed.

(1) Notice and distribution. A party intending to utilize

prefiled testimony must notify the board or commission and all other parties of the issues to be addressed and the witnesses to be used at least 14 days prior to the hearing at which this testimony will be offered. At least 7 days prior to the hearing, the offering party must submit a copy of the testimony to each party of record, to the district coordinator or board staff, and to each board or commission member who will be reviewing the testimony. These time requirements may be waived by the board or district commission upon a showing of good cause.

(2) Hearing procedure. Prefiled testimony is intended only to facilitate presentation of a witness's direct testimony. The witness must be present at the hearing to present his direct testimony in writing and to affirm its truthfulness. Objections to the admissibility of the testimony will be heard when it is offered unless an earlier deadline for objections has been established by the board or district commission. The witness must remain available for cross-examination. If the parties have received copies of the testimony in accordance with this Rule, the board or district commission may require that cross-examination proceed immediately.

(E) Prehearing submissions. The board or district commission may direct, by way of a prehearing conference order or otherwise, that all parties to a contested case submit to the board or district commission in advance of any scheduled hearing date, a copy of all proposed exhibits, a list of all proposed witnesses, a summary of all proposed testimony, memoranda concerning any issue in controversy, prefiled testimony, or such other

information as the board or district commission deems appropriate.

Rule 18. Conduct of Hearings

(A) Quorum and deadlocks. Unless waived by all parties, a quorum of the board to conduct business, including holding a hearing, shall consist of more than half of its members, but in no event less than four members. A quorum of a district commission to conduct business, including holding a hearing, shall consist of two members. In the event that a tie vote results during the conduct of any business, conduct of business will be recessed until an uneven number of members can meet and break the tie. In the event of a hearing decision over which a deadlock exists, a rehearing will either be held or decided on the transcript or recording thereof; the decision to rehear will be made by a majority of those members of the board or district commission who convene to break the deadlock.

(B) Alternate commission members. In the event that any member of a district commission is unavailable to participate in a hearing or is disqualified, the district commission chair may, if the issues so warrant it, assign an alternate commissioner. At the request of the chair of a commission, the board chair may assign a member or members from another district to serve on the commission.

(C) Chair. At any hearing the members convened therefor will designate a member as chair to conduct the hearings if the duly appointed chair is absent, or for some other reason elects not to chair the hearing. The chair or acting chair shall have the

power to administer oaths to witnesses; and, unless a party objects, rule on questions of evidence and offers of proof, take depositions or order such to be taken, rule on the validity of service of subpoenas and other notices, and do whatever is necessary and proper to conduct the hearing in a judicious, fair and expeditious manner.

(D) Dismissal. The board may, on its own motion or at the request of a party, consider the dismissal, in whole or in part, of any matter before the board for reasons provided by these rules, by statute, or by law. At the request of a party or on its own motion, the board will entertain oral argument prior to considering any such dismissal; such argument shall be preceded by notice to the parties unless dismissal is considered at a regularly convened hearing on the matter. A decision to dismiss shall include a statement of findings of fact and conclusions of law and shall be made within 20 days of the final hearing at which dismissal is considered.

(E) Recording of proceedings. A qualified stenographer or an electronic sound recording device shall be used to record all hearings where:

(1) An even number of board or district commission members are conducting the hearing; or

(2) A party requests that proceedings be recorded; or

(3) When the board or commission deems appropriate.

Any party intending to stenographically record a hearing shall so notify the commission or board not less than one working day prior to the hearing. The party requesting this method of

recording shall be responsible for arranging the appearance of, and payment to, the stenographer. A copy of any transcript shall be provided to the board or district commission without cost; other parties wishing a copy shall reimburse the requesting party on a pro rata basis. Disputes over sharing of costs shall be resolved by the board or district commission.

(F) Completion of deliberations. A hearing shall not be closed until a district commission or the board has provided an opportunity for all parties under the relevant criteria to respond to the last permit or evidence submitted. Once a hearing has been closed, a commission or the board shall conclude deliberations as soon as is reasonably practicable. A decision of a commission or the board shall be issued within 20 days of the completion of deliberations. (Amended, effective 1995.)

See 10 V.S.A. § 6085(f).

Rule 19. Compliance with Other Laws - Presumptions

(A) Alternative procedures. In the event that a subdivision or development is also subject to standards of or requires one or more permits from another state agency, the applicant may elect to follow any one or any combination of the following procedures:

(1) Obtain other permits or certifications before filing the Act 250 application (See (B) below); or

(2) File the Act 250 application prior to, or together with other applications, but with an intention to use other permits or certifications to establish presumptions of compliance with substantive criteria of the Act (See (C) below); or

(3) With the approval of the district commission, an Act 250

application may be filed first, with an intention to satisfy certain substantive criteria of the Act with independent evidence of compliance (See (D) below).

In addition, an applicant may file an application for partial findings under the appropriate criteria in accordance with Rule 21. (Amended, effective January 2, 1996.)

(B) Permits accompanying application. If the applicant obtains applicable permits or certifications listed in section (E) of this rule prior to filing an Act 250 application, he or she shall attach copies of such permits or certifications to the application. Such permits and certifications, when entered in the record pursuant to Rule 17(B), will create presumptions of compliance with the applicable criteria of the Act in the manner set out in section (F) of this rule.

(C) Permits obtained after application. If an applicant states an intention to use applicable permits or certifications not yet issued to raise presumptions under this rule, the board or district commission may, at its discretion, defer issuing a land use permit until the necessary permits or certifications are issued, and may recess the hearing until they are submitted by the applicant. The applicant must submit copies of each permit or certification relied upon to the district commission or board. The district commission or board will, within five days, forward copies of each permit or certification to each party who has requested an opportunity to review it, together with a notice of the party's right to request a reconvened hearing. (Amended, effective January 2, 1996.)

Rule 19.

The district commission or board may reconvene the hearing on its own motion, or upon the request of a party intending to rebut the presumption or claiming that there has been a substantial change in circumstances pertaining to the application. Any request by a party to reconvene must be filed within 10 days of the date of mailing of the permit or certification and notice. If no such request is received, the hearing will be considered closed on the relevant criteria. If a request is received and the hearing is reconvened, evidence will be taken in the manner set out in section (F) of this rule.

(D) No reliance on permits. With district commission approval, an applicant may seek to satisfy the burden of proof under applicable criteria of the Act without submitting permits or certifications from other state agencies by offering affirmative evidence through testimony, exhibits and other relevant material upon which the district commission or board can make findings of fact and conclusions of law. However, if any of the permits or certifications identified in section (E) of this Rule must be obtained prior to construction or use of the project, or portion thereof, the district commission or board may, on its own motion or on motion by a party, defer taking evidence until the necessary permits or certifications are issued and may recess the hearing until they are submitted by the applicant. If action is deferred, the provisions of section (C) of this rule shall apply.

(E) Permits creating presumptions. In the event a subdivision or development is also subject to standards of or requires one or

more permits from another state agency, such permits or certifications of compliance, when entered in the record pursuant to Rule 17(B), will create the following presumptions:

(1) That waste materials and wastewater can be disposed of through installation of wastewater and waste collection, treatment and disposal systems without resulting in undue water pollution: (Amended, effective May 4, 1990.)

(a) A subdivision permit - Agency of Natural Resources, under 18 V.S.A. Chapter 23 and rules adopted thereunder. (Amended, effective May 4, 1990.)

(b) A water supply and wastewater disposal permit (even if limited to exterior sewer approval only) - Agency of Natural Resources under 10 V.S.A. Chapter 61 and rules adopted thereunder. (Amended, effective May 4, 1990.)

(c) A mobile home park permit - Agency of Natural Resources, under 10 V.S.A. Chapter 153 and rules adopted thereunder. (Amended, effective May 4, 1990.)

(d) A campground permit - Agency of Natural Resources, under 3 V.S.A. § 2873(c) and rules adopted thereunder. (Amended, effective May 4, 1990.)

(e) A discharge permit for a discharge or for a wastewater treatment facility owned or controlled by the applicant and to be used by the project - Agency of Natural Resources, under 10 V.S.A. Chapter 47 and rules adopted thereunder. (Amended, effective May 4, 1990.)

(f) A certification of compliance that the project's use of a sewage treatment facility not owned or controlled by the

applicant complies with the permit issued for that facility by the Agency of Natural Resources, under 10 V.S.A. Chapter 47 and rules adopted thereunder. (Amended, effective May 4, 1990.)

(g) A sewer lines extension permit - Agency of Natural Resources, under 10 V.S.A. Chapter 47 and rules adopted thereunder. (Added, effective January 2, 1996.)

(h) An underground injection permit for the discharge of non-sanitary waste into an injection well - Agency of Natural Resources, under 10 V.S.A. Chapter 47 and rules adopted thereunder. (Added, effective January 2, 1996.)

(i) A solid waste or hazardous waste certification - Agency of Natural Resources, under 10 V.S.A. Chapter 159 and rules adopted thereunder. (Amended, effective May 4, 1990 and January 2, 1996.)

(j) An underground storage tank permit with regard solely to the substance to be stored in the underground storage tank - Agency of Natural Resources under 10 V.S.A. Chapter 59 and rules adopted thereunder. (Added, effective January 2, 1996.)

(2) That no undue air pollution will result:

(a) Air Pollution Control Permit - Agency of Natural Resources, under 10 V.S.A. § 556 and rules adopted thereunder. (Amended, effective May 4, 1990 and January 2, 1996.)

(3) That a sufficient supply of potable water is available:

(a) Public utility permit - Public Service Board under 30 V.S.A. §§ 203 and 219.

(b) Municipal permit - Local water authority.

(c) Subdivision permit - Agency of Natural Resources, under 18 V.S.A. Chapter 23 and rules adopted thereunder. (Amended, effective May 4, 1990.)

(d) Water supply and wastewater disposal permit (even if limited to exterior water approval only) - Agency of Natural Resources under 10 V.S.A. Chapter 61 and rules adopted thereunder. (Amended, effective May 4, 1990.)

(e) Mobile home park permit - Agency of Natural Resources, under 10 V.S.A. Chapter 153 and rules adopted thereunder. (Amended, effective May 4, 1990.)

(f) Campground permit - Agency of Natural Resources, under 3 V.S.A. Chapter 51 and rules adopted thereunder. (Amended, effective May 4, 1990.)

(g) A public water system construction permit - Agency of Natural Resources, under 10 V.S.A. Chapters 48, 56, and 61; 18 V.S.A. § 1218, and rules adopted thereunder. (Amended, effective January 2, 1996.)

(h) A public water system operating permit - Agency of Natural Resources, under 10 V.S.A. Chapters 48, 56, and 61; 18 V.S.A. § 1218, and rules adopted thereunder. (Added, effective January 2, 1996.)

(4) That the application of pesticides will not result in undue water or air pollution and will not cause an unreasonable burden on an existing water supply:

(a) Permit for the application of herbicides to maintain and clear rights-of-way - Department of Agriculture,

under 6 V.S.A. Chapter 87 and rules adopted thereunder.

(5) That the development or subdivision will not violate the rules of the water resources board relating to significant wetlands:

(a) A conditional use determination with respect to uses in class one or class two wetlands or their buffer zones - Agency of Natural Resources under 10 V.S.A. Chapter 37, and rules adopted thereunder. (Added, effective January 2, 1996.)

(F) Effect of presumptions. A permit or certification filed under this rule shall create a rebuttable presumption that the portion of the development or subdivision subject to the permit or certification is not detrimental to the public health and welfare with respect to the criteria specified in these rules. However, the district commission or board may on its own motion question the applicant, the issuing agency or other witnesses concerning the permit or certification, and any party may challenge the presumption. If a party challenges the presumption, it shall state the reasons therefor and offer evidence at a hearing to support its challenge. If the commission or board concludes, following the completion of its own inquiry or the presentation of the challenging party's witnesses and exhibits, that a preponderance of the evidence shows that undue water pollution, undue air pollution, inadequate water supply, unreasonable burden on an existing water supply, or violation of the rules of the water resources board relating to significant wetlands is likely to result, then the commission or

board shall rule that the presumption has been rebutted. Technical non-compliance with the applicable health, water resources and Agency of Natural Resources' rules shall be insufficient to rebut the presumption without a showing that the non-compliance will result in, or substantially increases the risk of, undue water pollution, undue air pollution, inadequate water supply, unreasonable burden on an existing water supply, or violation of the rules of the water resources board relating to significant wetlands. Upon the rebuttal of the presumption, the applicant shall have the burden of proof under the relevant criteria and the permit or certification shall serve only as evidence of compliance.

(G) Changes requiring amendment. In the event a permit or certification issued after the filing of an Act 250 application imposes restrictions or conditions which substantially change the character or impacts of the proposed subdivision or development,the applicant shall amend the application to reflect such changes with due notice to all parties. The district commission or board may, on its own motion or on motion of any party, reconvene a hearing to consider evidence which is relevant to such changes.

(H) As used in this rule, the terms "permit" and "certification" shall refer to any written document issued by the appropriate state agency attesting to a project's compliance with the regulations or statutes listed in section (E) of this rule. With respect to approvals identified in section (E)(1) of this rule, a commission or the board may accept a "site and foundation

approval" as establishing presumption if it determines that said approval is based upon an evaluation by the Agency of Natural Resources of site characteristics and a specific waste disposal system plan. (Amended, effective May 4, 1990.)

(I) Municipal presumptions. The board and the district commissions shall accept determinations issued by a development review board under the provisions of § 4449 of Title 24 with respect to municipal impacts under criteria 6, educational services; 7, municipal services; and 10, conformance with the municipal plan (10 V.S.A. § 6086(a)). These decisions must include findings of fact and conclusions of law demonstrating compliance or non-compliance with the relevant criteria of Act 250. Such determinations of a development review board, either positive or negative, under the provisions of § 4449 of Title 24, shall create a rebuttable presumption only to the extent that the impacts under the criteria are limited to the municipality issuing the decision. A development review board decision involving local Act 250 review of municipal impacts must include a notice that it constitutes a rebuttable presumption under the relevant criteria and that the presumption may be challenged in proceedings under 10 V.S.A. chapter 151. (Added, effective January 2, 1996.) **See 10 V.S.A. § 6086(d).**

Rule 20. Information Required

(A) Supplementary information. The board or district commission may require any applicant to submit relevant supplementary

data for use in resolving issues raised in a proceeding, and in determining whether or not to issue a permit. When necessary to an adequate evaluation of an application under the criteria set forth in 10 V.S.A. § 6086(a)(1) through (a)(10), the district commission or board may require supplementary data concerning the current or projected use of property owned by the applicant or others adjoining the project site.

(B) Investigation.

(1) The board or district commission may conduct such investigations, examinations, tests and site evaluations as it deems necessary to verify information contained in the application or otherwise presented in a proceeding.

(2) The board or district commission may make reasonable inquiry as it finds necessary to make findings and conclusions as required; in this event the board or district commission may recess the proceedings or require such investigations, tests, certifications, witnesses, or other assistance as it deems necessary to evaluate the effects of the project under the criteria in question or any other issues before it. (Amended, effective January 2, 1996.)

Rule 21. Order of Evidence - Partial Review

(A) To avoid unnecessary or unreasonable costs, an applicant, upon notice and approval of a district commission or the board and upon filing an application or an appeal to the board, may offer evidence in support of or have the project

reviewed under any of the criteria or sub-criteria under the Act in any sequence approved by the district commission or the board. However, such procedure shall not be permitted by the board or a district commission if it works a substantial hardship or inequity upon other parties to the proceedings, will unduly delay final action on the application, or make comprehensive review of an application under applicable criteria impractical or unduly difficult. An applicant seeking to use this procedure shall notify the board or district commission and all parties entitled to receive notice, of his or her petition and the sequence and timing under which he or she intends to offer evidence or submit the project for review under specified criteria or sub-criteria.

(B) A district commission or the board, on its own motion, may consider whether to review any of the criteria or sub-criteria before proceeding to the review of the remaining criteria. (Added, effective January 2, 1996.)

(C) In any proceeding under sections (A) or (B) of this rule, the district commission or the board, shall, within 20 days of the completion of deliberations on the criteria that are the subject of the proceeding, either issue its findings and decision thereon, or proceed to a consideration of the remaining criteria. The decision to issue a decision or proceed to the remaining criteria shall be in the sole discretion of the district commission or board. If the district commission first issues a partial decision under this rule, the applicant or a party may appeal that decision within 30 days under § 6089 of Title 10 and

Rule 40 of these rules, or may appeal after the final decision on the complete application. (Amended, effective January 2, 1996.)

(D) If the district commission or the board decides to issue a partial decision and insofar as the applicant sustains his or her burden of proof or a party opposing the application fails to sustain its burden of proof as provided for in the Act under the applicable criteria, the board or district commission shall make affirmative findings of fact and conclusions of law including any conditions or limitations relevant thereto to be imposed by the district commission or board. If the district commission or board is unable to make such findings by reasons of inadequate evidence or information, it shall inform the applicant and all parties. Such affirmative findings, conclusions of law and any conditions or limitations shall remain in effect, pending issuance or denial of a permit under the Act, for a reasonable and proper term as determined by the district commission or board. For the purposes of this section, any findings of fact or conclusions of law made by a district commission based upon the criteria of § 6086(a) shall be a final decision and subject to appeal to the board as provided for under the law; provided, however, the applicant, and any other party may elect to reserve an appeal from findings and conclusions under these criteria until after final action on the application has been made by the district commission. (Amended, effective January 2, 1996.)

See 10 V.S.A. § 6086(b).

Rule 21.

The findings of fact and conclusions of law made under the terms of this section shall be binding upon all parties during the period specified by the district commission or board unless it is clearly shown that there was misrepresentation or fraud or that the facts relevant to the matter have so materially changed as to render the findings or conclusions clearly erroneous, contrary to the purposes of the Act and without basis in fact.

(E) A permit shall not be granted under this rule until the applicant has fully complied with all criteria and all affirmative findings have been made by the district commission or board as required by the Act. If a master plan has been presented and reviewed for an industrial park or other large project, the district commission or the board may issue a master permit to the extent that the district commission or the board has made affirmative findings and has imposed conditions as required by 10 V.S.A. Chapter 151. Subsequent phases may be reviewed and approved as amendments to the master permit in accordance with board rules and statutory provisions. (Amended, effective May 4, 1990 and January 2, 1996.)

(F) The procedures authorized under this section are intended to minimize costs and inconvenience to applicants and shall be applied liberally by the board or district commission for that purpose consistent with the right of other parties and the requirements of law and any pertinent regulations. (Amended, effective July 15, 1974 and February 1, 1978).

ARTICLE III. LAND USE PERMITS

Rule 30. Approval or Denial of Applications

The board or district commission shall, within 20 days of the completion of deliberations on an application, issue a decision approving, conditionally approving, or denying the application. The date of completion for deliberations shall be governed by Rule 18(F) of these rules. The decision on the application shall contain findings of fact and conclusions of law specifying the reasons for the decisions reached on all issues for which sufficient evidence was offered. If the application is approved, the decision shall also contain a land use permit in the name of the applicant, enabling the applicant to proceed with the development or subdivision in accordance with any stated terms and conditions. (Amended, effective May 4, 1990 and January 2, 1996.)

Rule 31. Reconsideration of Decisions

(A) Motions to alter decisions. A party may file within 30 days from the date of a decision of the board or district commission one and only one motion to alter with respect to the decision. However, no party may file a motion to alter a decision concerning or resulting from a motion to alter. (Amended, effective May 4, 1990 and January 2, 1996.)

(1) All requested alterations must be based on a proposed reconsideration of the existing record. New arguments are not

conditions or allegedly improper use of procedures, provided that the party seeking the alteration reasonably could not have known of the conditions or procedures prior to decision. New evidence may not be submitted unless the board or district commission, acting on a motion to alter, determines that it will accept new evidence. (Added, effective January 2, 1996.)

(2) A motion to alter should number each requested alteration separately. The motion may be accompanied by a supporting memorandum of law which contains numbered sections corresponding to the motion. The supporting memorandum should state why each requested alteration is appropriate and the location in the existing record of the supporting evidence. Any reply memorandum of law should also contain numbered sections corresponding to the motion. Additional requirements concerning motions and memoranda are set out in Rule 12 of these rules. (Added, effective January 2, 1996.)

(3) The board or district commission shall act upon motions to alter promptly. The running of any applicable time in which to appeal to the board or supreme court shall be terminated by a timely motion filed under this rule. The full time for appeal shall commence to run and is to be computed from issuance of a decision on said motion. It is entirely within the discretion of the board or district commission whether or not to hold a hearing on any motion. (Amended, effective May 4, 1990)

(4) The board or district commission may on its own motion, within 30 days from the date of a decision, issue an altered

decision or permit. Alterations by board or district commission motion shall be limited to instances of manifest error, mistakes, and typographical errors and omissions. (Added, effective May 4, 1990.)

(B) Application for reconsideration of permit denial.

(1) Procedure. An applicant for a permit which has been denied by the board or district commission may, within six months of the date of that decision, apply to the district commission for reconsideration of the application.

The applicant for reconsideration shall certify by affidavit in the application that notice and copies of the application have been forwarded to all parties of record, and that the deficiencies in the application which were the basis of the permit denial have been corrected. The district commission shall hold a new hearing upon 25 days notice to the parties. The hearing shall be held within 40 days of receipt of the request for reconsideration which has been deemed complete. (Amended, effective May 4, 1990 and January 2, 1996.)

(2) Scope of review. The district commission may, but need not necessarily, limit its scope of review to those aspects of the project or application which have been modified to correct deficiencies noted in the prior permit decision. The findings of the board or district commission in the original permit proceeding shall be entitled to a presumption of validity in the reconsideration proceeding, insofar as those findings are not affected by proposed modifications in the project. However,